



Access to Justice for Child Victims: Examining the Juvenile Criminal Justice System

Ahmad Sofian¹ and Rena Yulia²

¹Business Law Department, Bina Nusantara University, Indonesia

²Faculty of Law, Sultan Ageng Tirtayasa University, Indonesia

¹Corresponding author: asofian@binus.edu

²renayulia@untirta.ac.id

Abstract. Criminal offenses involving children as both perpetrators and victims often lead to extended controversy. The lengthy judicial process causes trauma for children confronted with the law. The juvenile justice system provides mechanisms for diversion to resolve cases outside of court. This diversion is believed to offer the best protection for child offenders. The emerging issue is whether diversion also serves the best interests of child victims. How is access to justice for child victims ensured within the juvenile criminal justice system? The objective of this research is to examine access to justice for child victims within this system. The methodology employed is a legislative approach within the framework of criminal law reform. The findings indicate that the regulations within the juvenile justice system have upheld the best interests of child victims. Various principles established provide space for child victims within the diversion process. Diversion will occur only with the consent of the child victim or their parents/guardians; this principle aligns with the best interests of the child victim. Child victims are involved in mediation and are given opportunities to express their needs. They are accompanied by their parents or guardians; however, at times, the agreements reached may reflect more the desires of the parents or guardians. Nonetheless, child victims still retain access to the justice they seek, as manifested in the diversion agreement.

Keywords: juvenile criminal justice system, child victims, access to justice

1 Introduction

In recent years, justice for child victims of crime within criminal justice systems has received considerable attention. In many countries, including Indonesia, children frequently become victims of criminal acts perpetrated by their peers. The number of cases involving children as both perpetrators and victims continues to rise.

Data from the Directorate General of Corrections of the Ministry of Law and Human Rights shows a rising trend in cases of children in conflict with the law from 2020 to 2023. As of August 26, 2023, nearly 2,000 children were recorded as being in conflict with the law. From these, 1,467 children were detained and undergoing judicial processes, while 526 children were serving sentences as inmates. In observing the situation in 2020 and 2021, approximately 1,700 children were involved in legal cases. This number increased to around 1,800 children in the following year. This upward

trend serves as an alarm that Indonesian children are facing significant challenges and are heading toward a problematic condition.[1]

In addressing cases involving children in conflict with the law, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System has adopted diversion based on restorative justice. This approach ensures that children in conflict with the law are not immediately processed through punitive legal enforcement, but rather provided with resolution actions outside of court. The aim is to prevent negative stigma towards these children and to fundamentally serve the best interests of the child.

Children suspected of being offenders or those in conflict with the law require special attention and protection to develop appropriately for their age. The state has accommodated child protection through the reform of the juvenile justice system, which includes the fulfillment of children's rights during judicial processes, as well as rehabilitation after serving sentences or undergoing interventions. The reform of the juvenile justice system, embodied in the enactment of the SPPA Law, among other things, incorporates child protection through diversion using a restorative justice approach. This involves resolving juvenile cases outside of the criminal justice system through family deliberation in order to achieve fair resolutions without neglecting the needs of all parties, focusing on recovery and avoiding retribution. For children who have unfortunately become offenders, a strategic approach within the juvenile justice system is required to minimize intervention as much as possible [2]

Diversion is an action or treatment that shifts cases from formal processes to informal ones, or removes child offenders from formal court proceedings. This means that not all issues involving children in conflict with the law must be resolved through the formal justice system, instead providing alternative solutions that utilize a restorative justice approach, keeping in mind the best interests of the child while also considering justice for victims and society. [3]

The objective of the juvenile justice system is not solely to impose criminal sanctions on children who have committed offenses, but rather to focus on the underlying premise that such sanctions serve as a means to support the well-being of child offenders. Legal certainty must be sought to ensure the continuity of child protection efforts and to prevent abuses that may result in undesirable negative consequences in the implementation of child protection activities. Therefore, child protection initiatives must encompass at least two aspects. The first aspect relates to the policies and legislative regulations governing child protection. The second aspect concerns the implementation of these policies and regulations.[4]

The application of diversion within restorative justice in the diversion system for children in conflict with the law represents an implementation of restorative justice principles aimed at providing justice and legal protection to children without neglecting their criminal responsibility. [4]

What about children who become victims of those in conflict with the law? Does the resolution of diversion for the offending child also serve the best interests of the child victim? How is justice for child victims addressed within the juvenile criminal justice system? If we trace the concept of restorative justice, which aims to restore the disrupted balance between the offender, the victim, and society, then all parties should receive attention. Therefore, in this context, the juvenile criminal justice system is expected to provide adequate protection and justice for child victims.

The significance of this research lies in the necessity to critically examine the current juvenile criminal justice system, with a focus on access to justice for child victims of offenses committed by child offenders. Specifically, it addresses the access of child victims to diversion resolutions based on restorative justice principles. The objective of this research is to understand the access available to child victims within the juvenile criminal justice system, ensuring that their rights are restored through this system and promoting reforms in juvenile criminal law that prioritize the protection of child victims.

2 Method

The research method employed was normative legal research. The study used an approach based on legal principles and legislative frameworks. The principle-based approach involves an examination of diversion based on restorative justice in protecting child victims, as well as an analysis of the Juvenile Criminal Justice System Law regarding the involvement of child victims in the diversion process under restorative justice.

3 Result And Discussion

3.1 Diversion and the Best Interests of Child Victims

The juvenile criminal justice system prioritizes restorative justice, which involves resolving criminal cases by engaging the offender, victim, families of both parties, and other related individuals to collaboratively seek a fair resolution that emphasizes restoration to the original state rather than retribution.

Based on this premise, the term diversion emerges in the Juvenile Criminal Justice System Law. According to Article 1, subsection 7 of the Juvenile Criminal Justice System Law, diversion refers to the transfer of the resolution of a child's case from the criminal justice process to a process outside of it. The goals of this diversion include:

1. Achieving reconciliation between the victim and the child
2. Resolving the child's case outside of the legal process
3. Preventing the deprivation of liberty for the child
4. Encouraging community participation
5. Instilling a sense of responsibility in the child.

The primary principle of implementing diversion is the use of persuasive actions, also known as a non-punitive approach, which provides individuals with the opportunity to correct their mistakes. Consequently, all decision-making must always consider the well-being and development of the child through guidance and support towards a positive

direction, particularly regarding matters that influence the child's life. The implementation of a persuasive approach within the concept of diversion ensures that the rights of children in the juvenile justice system are of paramount concern; however, exceptions may be made if other efforts are unfeasible or in cases where urgency is required to facilitate the resolution of the matter.[5]

Diversion is an action undertaken to redirect the resolution of offenses committed by children in conflict with the law through deliberation, which is an integral part of the juvenile criminal justice system. Diversion can be initiated by investigators, public prosecutors, and during the judicial process. In the investigation phase, police as investigators are granted the authority to implement diversion in resolving cases of juvenile offenses. This is particularly significant due to the role of law enforcement agencies as the first point of contact with the community. [6]

The application of the diversion concept as a realization of restorative justice in the behavioral change of child offenders is an approach intended to redirect juvenile offenders from formal criminal justice processes and, conversely, guide them towards programs or actions that emphasize restoration and rehabilitation. The primary objective of this approach is to achieve understanding and reconciliation among the offender, the victim, and the community, while also reducing the risk of recidivism among these children. [7]

The administration of diversion is an alternative to criminal accountability that incorporates the values of restorative justice. The child must acknowledge their actions; however, they are not subjected to criminal sanctions as is the case with adult offenses. The primary objective of diversion is to achieve reconciliation between the victim and the offender without resorting to judicial processes. This approach aims to protect the child from stigmatization and marginalization within society. The proper implementation of diversion, that meets the criteria established in the Juvenile Criminal Justice System Law, will safeguard the rights of the child (in this case, the child as a minor offender). Children, who are legally under parental guardianship, necessitate the involvement of parents in the resolution of juvenile cases.[8]

Diversion can be conducted in a conducive and child-friendly environment, rather than always in an interrogative setting at the police station. Mediators may be drawn from trusted community figures, and in school-related incidents, the principal or teachers may facilitate the process. Diversion is believed to foster restorative justice, thereby fulfilling the rights of the child as an offender. However, the benefits of the diversion system are often misunderstood by the offenders (children in conflict with the law). The policy of diversion warrants reconsideration, as many offenses have been successfully diverted only to be repeated..

Child offenders must fulfill individual responsibility, meaning they must be prepared to accept and account for the crimes they have committed without making excuses. This is why diversion plays an essential role in facilitating encounters between parties, encouraging offenders to acknowledge their mistakes with the hope that feelings of shame and remorse will arise. Furthermore, regarding responsibility and freedom, diversion frees children from legal burdens; however, the desired freedom is one that is responsible and committed to not reoffending. The existence of a juvenile criminal system reflects the social responsibility of the child toward the victim, thus the child must be willing to accept all sanctions imposed, particularly those related to the development of their moral and spiritual character. Additionally, child offenders who undergo diversion must assume responsibility toward others (victims, victims' families, schools) and be prepared to face the consequences of their actions.[8]

Article 6 of the Juvenile Criminal Justice System Law states that the purpose of diversion is to achieve reconciliation between the victim and the child offender. This reconciliation primarily aims to safeguard the interests of the offender to prevent

stigmatization. This can be observed in other diversion objectives that are entirely focused on the child offender. It is unfortunate that there is no clear objective aimed at restoring the victim from the offense committed by the child, for instance.

However, Article 8 stipulates that the diversion process must take into account the interests of the victim. This raises the question of whether it refers to the best interests of the victim or other needs. If the victim is a child, they certainly have a legitimate interest in avoiding trauma from the offense they experienced, including trauma from the judicial process that often carries negative and exhausting stigmas. In practice, victims have a role in determining the desired agreement. As outlined in Article 9, diversion must receive the approval of the victim and/or the family of the child victim. Agreements are made based on the consent of the child victim or their family. However, in some cases, there are demands for compensation that exceed reasonable limits, ultimately preventing consensus. Consequently, diversion fails, and the case proceeds to the next stage.

Based on interviews with investigative police and community supervisors in Serang City, it was found that in cases of diversion involving both child offenders and child victims, both parties attended the diversion process accompanied by their parents or guardians. Each child victim was provided an equal opportunity to express their wishes. If an agreement is not reached, the case will proceed to judicial processes. In the diversion process, child victims also have a role in determining what kind of justice they wish to achieve; however, in practice, parental dominance is often more pronounced, and children tend to remain silent.

Despite this, diversion represents the best interests of the child victim, as the diversion process prioritizes their interests and aims to achieve reconciliation between the victim and the child offender. The practice of diversion involves child victims and is contingent upon their approval. The outcomes of the agreements are the achievements mutually consented to by both parties. Therefore, the best interests in diversion apply not only to the child offender but also to the child victim.

3.2 Access to Justice for Child Victims in the Juvenile Criminal Justice System

According to Supreme Court Regulation No. 4 of 2014 on Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System, the diversion deliberation involves the child and their parents/guardians, community supervisors, professional social workers, representatives, and other relevant parties to reach a diversion agreement through a restorative justice approach. Subsequently, the facilitator is the judge appointed by the Chief Justice to handle the case concerning the child.

If the diversion agreement is not fully implemented by the parties based on reports from community supervisors at the correctional facility, the judge will proceed with the examination of the case in accordance with the Juvenile Criminal Procedure Law. In rendering a decision, the judge must consider the partial implementation of the diversion agreement.

The regulation also specifies that diversion applies to children who are 12 years old but under 18 years old, or who are 12 years old and have been married but are still under 18, who are suspected of committing a crime.

This regulation also outlines the stages of the diversion deliberation, whereby the facilitator appointed by the Chief Justice must provide the opportunity for:

1. The child to be heard regarding the allegations against them
2. The parents/guardians to present matters related to the child's actions and the form of resolution they expect
3. The victim/child victim/parents/guardians to provide feedback and the form of resolution they hope to achieve.

The implementation of diversion within the juvenile justice system is primarily based on the principle of engaging the community to adhere to and uphold the law while considering a sense of justice. The diversion process is comprehensively regulated in Articles 6-15 of the Juvenile Criminal Justice System Law.

The law enforcement agencies involved in diversion operate within the juvenile criminal justice system. As components or subsystems of this framework, each law enforcement agency—namely the Police, the Prosecutor's Office, and the Courts—must pursue a common objective as outlined in Article 6 of Law No. 11 of 2012 regarding the Juvenile Criminal Justice System. These three components, which are part of what is often referred to as the Criminal Justice System, must function synergistically to establish a legal system that provides a sense of justice and legal protection for children.[9]

In the implementation of diversion in Indonesia, there are requirements that serve as guidelines for law enforcement officials. The diversion requirements are stated in Law No. 11 of 2012 Concerning the Juvenile Criminal Justice System, Article 8, which specifies the following:

1. The diversion process shall be conducted through deliberation involving the child and their parents/guardians, community supervisors, and professional social workers based on a restorative justice approach.
2. Where necessary, the deliberation referred to in paragraph (1) may involve social welfare workers and/or community members.
3. The diversion process must take into account:
 1. The interests of the victim.
 2. The welfare and responsibility of the child.
 3. The avoidance of negative stigma.
 4. The avoidance of retaliation.
 5. The harmony of the community.
 6. Propriety, morality, and public order.

From the victim's perspective, one aspect that has not been addressed is the recovery of the victim, in this case, the child. Diversion should not only aim to prevent retaliation but also prioritize the restoration of the child victim. It should not only prevent negative stigma for the offender but also provide positive experiences for the child victim. The interests of the victim are distinct from the recovery of the victim, and therefore, the restoration of the victim must be a focus within the diversion process.

Furthermore, Article 9 of Law No. 11 of 2012 Concerning the Juvenile Criminal Justice System also contains provisions regarding the implementation of diversion as follows:

1. The investigator, public prosecutor, and judge in conducting diversion must consider:
 - a. The category of the offense.

- b. The age of the child.
 - c. The results of the community study from the correctional facility.
 - d. The support from the family and community environment.
2. The diversion agreement must obtain the approval of the victim and/or the family of the child victim, as well as the willingness of the child and their family, except for:
 - a. Offenses classified as violations.
 - b. Minor offenses.
 - c. Offenses without a victim.
 - d. The value of the victim's loss must not exceed the local minimum wage.

There are exceptions to the requirement for victim approval, as mentioned above; however, concerning the value of losses that fall below the regional minimum wage, the author argues that this should still be discussed with the victim. Since the value of the victim's loss is relative—what may be significant for one person might be considered minor by another—it should not serve as a barrier to obtaining the victim's consent in the diversion process, regardless of the amount of loss involved.

Several criteria for offenses involving children as perpetrators, which should be addressed through a diversion approach, are as follows [9]:

1. Offenses punishable by imprisonment of up to one year should be prioritized for diversion; offenses punishable by imprisonment of more than one year but not exceeding five years may be considered for diversion. All cases of theft should strive for the application of diversion unless they result in harm related to physical well-being.
2. Considering the age of the offender, the younger the offender, the greater the urgency for applying the principles of diversion.
3. According to the results of the study from the correctional facility, if it is found that external factors beyond the child's control contributed to their involvement in criminal cases, the urgency for applying diversion principles becomes more significant.
4. The losses caused by the child's offense, if resulting in material damage and not involving physical harm to individuals, increase the urgency for applying diversion.
5. The level of public unrest caused by the child's actions.
6. The approval of the victim/family.
7. The willingness of the offender and their family.
8. In cases where a child commits an offense in conjunction with adults, the adult must be prosecuted according to standard legal procedures.

Regarding the special protection that must be provided to child victims, this is actually governed by Law No. 35 of 2014 on Child Protection. This law establishes specific protections for children who come into contact with the law. Children in conflict with the law include those who are offenders, victims, and witnesses. Such protections are outlined in Article 59A, which states: Special Protection for Children as referred to in Article 59, paragraph (1), shall be implemented through efforts:

1. Prompt handling, including treatment and/or rehabilitation physically, psychologically, and socially, as well as the prevention of disease and other health issues;
2. Psycho-social assistance during treatment until recovery;

3. Provision of social assistance for children from economically disadvantaged families;
4. Provision of protection and support during all judicial processes.

The provision of protection and support mentioned in point 4 should also be extended to child victims. In the diversion process, for instance, the offending child is accompanied by a Community Supervisor (Bapas) who has previously conducted a community study regarding the offender's life, leading to the recommendation for diversion. Child victims also require protection and support, for example, from the Child Protection Units (Unit PPA), Women and Child Protection Offices (KPPA), or possibly Integrated Service Centers for the Protection of Women and Children (P2TP2A). In some cases, organizations concerned with children's issues may play a role; however, in many instances, child victims are only accompanied by their parents or guardians, rather than by advisors who possess legal knowledge.

This is important, considering the rights of child victims that should be granted and acquired during the criminal justice process. This is regulated in Article 64 of Law No. 35 of 2014 on Child Protection. Special protection for children who come into contact with the law, as referred to in Article 59, paragraph (2), letter b, is implemented through:

1. Humane treatment that considers the child's age-appropriate needs;
2. Separation from adults;
3. Effective provision of legal assistance and other support;
4. Implementation of recreational activities;
5. Freedom from torture, punishment, or other cruel, inhumane treatment that degrades dignity and worth;
6. Exemption from the imposition of the death penalty and/or life imprisonment;
7. Minimization of arrest, detention, or imprisonment, except as a last resort and for the shortest time necessary;
8. Provision of fair trial in a child court that is objective, impartial, and held in closed sessions;
9. Avoidance of public disclosure of the child's identity;
10. Provision of support from parents/guardians and individuals trusted by the child;
11. Social advocacy;
12. Provision of privacy;
13. Accessibility, particularly for children with disabilities;
14. Provision of education;
15. Provision of health services; and
16. the granting of other rights in accordance with legal regulations.

From the sixteen protection rights mentioned above, only a few directly constitute protection for child victims, specifically the provision of support from parents or guardians. It is noteworthy that nearly all of these rights pertain to children in conflict with the law, while these rights are intended for all children who come into contact with the law, including child victims.

The diversion outlined in the Juvenile Criminal Justice System is implemented using the principles of Restorative Justice. The concept of restorative justice clearly differs significantly from the previous application of punitive measures for children in Indonesia, which prioritized punishment and retribution against offenders. The process of resolving cases also differs in terms of the involvement of victims and offenders. Previously, the approach to juvenile criminal case resolution in Indonesia did not

directly involve victims and offenders in the resolution process. Victims were only asked to provide information relevant to the case and were not directly involved. Offenders, during the case resolution process, communicated solely with their legal counsel and were even prevented from communicating directly with the victims.

The concept of Restorative Justice fundamentally includes:

1. Victims are the central focus in the case resolution process, meaning that victims will be actively involved in the resolution process;
2. The primary focus or objective of the case resolution process is to repair the harm between the offender and the victim, as well as between the victim and the community caused by the offender's criminal actions;
3. The community plays a more active role in directly intervening in the case resolution process, which facilitates a better understanding of both the offender and the victim, especially when the latter is a child, thereby reducing the likelihood of negative stigma in the future.;[10]

In essence, restorative justice aims primarily to restore harmony between the victim and the offender. For the victim, this involves addressing both physical and psychological harm, while for the offender, it entails taking responsibility by expressing remorse, acknowledging wrongdoing, and compensating for the losses suffered by the victim. The restorative justice approach also seeks to heal the wounds caused by the criminal acts of the offender. Additionally, the objectives of restorative justice encompass several key aspects, including:

1. Simplifying the process that a child in conflict with the law must navigate;
2. Protecting the rights of both the victim and the offender;
3. Minimizing the negative impacts of the criminal justice process experienced by children in conflict with the law;
4. Involving community participation in the law enforcement process.[10]

The diversion process that involves both the offending child and the victimized child in reaching an agreement serves as an example of case resolution that provides access to justice for the victim, allowing the child victim to express their needs and desires in resolving the matter that affects them.

In practice, based on interviews with investigators and community supervisors, child victims are always included in the deliberation process of diversion. Child victims are accompanied by their parents or guardians, and it is also possible for them to be supported by individuals concerned about children's welfare, such as Integrated Service Centers for the Protection of Women and Children (P2TP2A) or the Child Protection Commission. This means that not only the offending child is accompanied by a representative, but the child victim is as well.

If the outcomes of the diversion agreement are not implemented, the diversion is deemed unsuccessful, and the case will proceed to court. This process is monitored by the investigator and community supervisor. In practice, the implementation of the diversion agreement must occur immediately; if a request for time is made, it will be supervised by the investigator. When the case enters the judicial process, in certain circumstances, child victims are given the opportunity by the judge to express their opinions regarding the case in question.

4 Conclusion

Diversion serves the best interest of child victims as it prioritizes their needs and aims to achieve reconciliation between the victim and the child offender. The practice of diversion involves the participation of child victims with their consent. The outcomes of the agreement represent a shared resolution accepted by both parties. Therefore, the best interests in diversion pertain not only to the offending child but also to the victim child. Access to justice for child victims within the child criminal justice system is evident in their involvement in the diversion process, their consent to engage in diversion, approval of the diversion outcomes, and, in cases where diversion fails, the opportunity for the child victim to express their views in court.

It is advisable for child victims to have legal representation as part of the government, similar to the role of community supervisors for child offenders. This ensures that the suffering of child victims and their needs are clearly understood, thereby preventing unreasonable demands for compensation. Furthermore, it is beneficial for child victims to have legal counsel to assist them in articulating their opinions throughout the judicial process.

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